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88-1907

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1988

ELIJAH WHITE RATCLIFF,
APPELLANT
VS
UNITED STATES OF AMERICA,
APPELLEE

ON APPEAL FROM THE UNITED
STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JURISDICTIONAL STATEMENT

APPELLANT, PRO SE

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NO. _____

ELIJAH WHITE RATCLIFF, IN THE SUPREME

APPELLANT COURT OF THE

VS UNITED STATES

THE UNITED STATES OF OCTOBER

AMERICA, TERM, 1988

APPELLEE

JURISDICTIONAL STATEMENT

TO THE HONORABLE WILLIAM H. REHNQUIST, CHIEF JUSTICE, AND THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

QUESTIONS PRESENTED

I. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT IN FAILING TO ADDRESS THE FEDERAL QUESTIONS DULY PRESENTED UNDER TEN DISTINCT ARGUMENTS PRESENTED ON DIRECT APPEAL AND REITERATED BY POST JUDGMENT PROCEEDINGS INVOKED THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

II. WHETHER THE COURT OF APPEALS' MISREPRESENTED A CONTROLLING ISSUE BY RELATING THAT THE ACCUSED'S DISCOVERY MOTION WAS LIMITED TO "SUBSTANTIATING THAT HE OWED BACK TAXES" INVOKES SUPREME COURT JURISDICTION.

MISCONSTRUED AN ALTERNATIVE CONTROLLING ISSUE BY NEGLECTING TO ACKNOWLEDGE THAT SUBORNATED HEARSAY TESTIMONY PRESENTED BY THE GOVERNMENT WAS INADMISSIBLE AS INFERIOR TO THE BEST EVIDENCE WHERE THE GOVERNMENT AND THE TRIAL COURT HAD DECLINED TO FURNISH THE ORIGINAL OR PLENARY RECORD RELEVANT TO THE ISSUE IN RESPONSE TO APPELLANT'S DILIGENT AND APPROPRIATELY SUBMITTED DISCOVERY MOTION AND TRIAL SUBPOENA DUCES TECUM.

IV. WHETHER THE COURT OF APPEALS GAVE INSUFFICIENT CONSIDERATION TO IMPAIRMENT ATTENDING APPELLANT'S ARREST AND DETENTION IN CONJUNCTION HIS ABILITY TO PROPERLY APPEAL DENIAL OF THE POST CONVICTION PETITION.

V. WHETHER THE BRIEFS OF APPELLANT AND RECORD ON APPEAL AS DULY SUBMITTED SUFFICIENTLY REFLECTED, IDENTIFIED AND PRESERVED THE TRIAL COURT ERRORS FOR APPELLATE PURPOSES.

VI. WHETHER THE NEGLECT OF THE COURT OF APPEALS' PANEL ON DIRECT APPEAL TO ADDRESS CONTROLLING ISSUES CAN INVOKE PRINCIPLES OF RES JUDICATA OR COLLATERAL ESTOPPEL TO INHIBIT THE INHERENT PREROGATIVE OF A COURT OF COMPETENT JURISDICTION TO RECTIFY FRAUD AT ANY STAGE NOT AFFECTED BY LACHES.

VII. WHETHER A SUBSTITUTING TRIAL COURT JUDGE SHOULD TAKE JUDICIAL NOTICE OF "PRIOR PROCEEDINGS IN THE CASE" INCLUDING THE RECORDED MANNER AND FORM CONTROLLING ISSUES WERE DEVELOPED, PRESENTED AND PRESERVED.

VIII. WHETHER ERROR IN THE CASE DERIVED FROM THE FAILURE OF EACH PRESIDING JUDGE BELOW TO SET AN EVIDENTIARY HEARING ON THE PETITIONS

FOR POST CONVICTION RELIEF WITH A COPY OF THE CONTESTED JUDGMENT ATTACHED THERETO SHOWING THAT THE JUDGMENT INCLUDED ILLEGAL CONSECUTIVE SENTENCES.

IX. WHETHER REFUSAL TO OBTAIN A CLARIFYING INSTRUCTION ON THE DEFENSE OF ENTRAPMENT WAS ONE OF MULTIPLE INEFFECTIVE ASSISTANCE OF COUNSEL INSTANCIES IN THE SENTENCING COURT REFLECTIVE OF A BROADER FRAUDULENT OBJECTIVE INITIATED BY ELEMENTS OF THE STATE BAR OF TEXAS CALCULATED TO DIMINISH APPELLANT'S POTENTIAL AS A LAWYER.

RULE 15(b) LISTING OF PARTIES

Pursuant to Rule 15(b) of the Rules of the Supreme Court of the United States, Appellant enumerates the parties to the proceedings in the Court of Appeals whose Judgment is sought to be reviewed as follows:

Elijah White Ratcliff was the Plaintiff, Appellant.

The Honorable Richard Thornburgh, in his capacity as Attorney General of the United States designated by the contested District Court judgments

as custodian of Appellant, and the United States of America, were the Defendants, Appellees.

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OPINIONS BELOW AND JURISDICTION

OPINIONS BELOW

This Appeal is from the per curiam Opinion of a panel in the United States Court of Appeals for the Fifth Circuit rendered on the 31st day of January, 1989, and the denial of a Rule 40 Petition for Rehearing with Rule 35 Suggestion for Rehearing En Banc by Order entered on the 13th day of March, 1989 in the proceeding docketed as No. 88-1758 consolidated with No. 88-2018 in the Court of Appeals, which Opinion and Order are included in the Appendix submitted herewith.

JURISDICTION

(i) Nature of Proceedings and Statutory Basis for Jurisdiction.

This Appeal responds to the culmination of a campaign to diminish Appellant as a jurist and advocate by originally limited racially prejudiced elements of the State Bar of Texas which

developed in intensity over the years to yield a Four Count Indictment in the United States District Court for the Southern District of Texas, Houston Division, No. H-85-28, purportedly under Title 18, United States Code, Section 1505, and Title 26, United States Code, Section 7212(a), alleging the commission of threats and intimidation against an Internal Revenue Officer. Review measures covered direct appeals and collateral review followed by the Appeal below pursuant to Title 28, United States Code, Section 1291, and jurisdiction of the immediate review is pursuant to Title 28, United States Code, Sections 1254(1) and (3), 1651 and 2241, in conjunction with United States Code, Const. Arts. I, Sec. 9, Cl. 2; and III, Secs. 1 and 2; and Amends. I, V, VI and XIV.

(ii) Chronology and Situs of Action Below.

The Opinion of the United States Court of

Appeals, Fifth Circuit, No. 88-1758/88-2018, from which this Appeal arises was rendered on the 31st day of January, 1989, and Appellant's Petition for Rehearing in the Appeal was disallowed by an Order entered the 13th day of March, 1989. Appellant's Notice of Appeal was forwarded to the Clerk of the Court of Appeals in New Orleans, Louisiana 70130 and served on Appellants on the 21st day of March, 1989, each by first class United States Mail, as reflectedby the Appendix submitted herewith.

(iii) Appellate Statutory Jurisdiction.

Jurisdiction for the Supreme Court of the United States to proceed in the instant litigation is most appropriately vested by Title 28, United States Code, Section 1651 incorporating the right of a tribunal to act pursuant to its inherent Constitutional jurisdiction. Lott v United States, 361 U.S. 421 (1961).

Primary jurisdiction in the United States District Courts below derived from

Title 28, United States Code, Sections 2241 and 2255, but the neglect of the trial courts to exercise their prescribed jurisdiction coupled with the refusal of the Court of Appeals to grant the accused's remedy pursuant to Title 28, United States Code, Section 1291, invokes the inherent jurisdiction of the Supreme Court.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The instant litigation evolved from encroachments upon Appellant's free speech rights as a lawyer and citizen under United States Code, Const. Amend. I. In response to Appellant's persistent resistance to the pertinent encroachment efforts, harassment of Appellant and his business activities was increased extending to defame his good will within the Internal Revenue Service and giving rise, ultimately, to an Indictment under Title 18, United States Code, Section

1505, and Title 26, United States Code, Section 7212(a).

The progression and eventual magnitude of the irregularities geared to the Internal Revenue Service was reflected by records accumulated within the agency. Thus, Fed. Rules Cr. Proc., Rules 12, 15 and 16, 28 U.S.C., were immediately invoked to effect formal discovery of the pertinent fraud and entrapment endeavor, within the contemplation of United States Code, Const. Amends. I and V.

Habeas corpus relief and a remedy in the nature of error coram nobis have been sought pursuant to Title 28, United States Code, Sections 2241 and 2255; Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C.A.; and Fed. Rules Cr. Proc., Rule 35, 18 U.S.C., preliminary to invoking appellate jurisdiction pursuant to Title 28, United States Code, Sections 1291 and 1651.

The Constitional provisions, statutes

and rules involved in the case are so extensive that initial reference to each is impractical, but Title 28, United States Code, Section 1651, representing the substantive jurisdictional basis upon which joinder of issues rests, is as follows:

> "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages principles of law."

STATEMENT OF THE CASE

(i) Statement of Facts.

Certain constituents of the Regional Office of the Internal Revenue Service headquartered at Austin, Texas, were coaxed by racially prejudiced elements of the Texas bar into targeting Appellant for harassment under the guise of Internal Revenue intelligence and collection procedures (See discovery motion and subpoena duces tecum for IRS designate:

S.D. TX Doc. No. 8 and 55; Tr. Vol. II, p. 3, l. 20-25, p. 4, l. 14, p. 14, l. 3-12).

At the early stages of the irregularities only Appellant's Texas business endeavors were observed to be affected, along with geographically local associates and patrons, and the responses, petitions and complaints engaged by Appellant and the pertinent business interests were limited to the United States District Court for the Southern District of Texas (See CA No. H-82-620, US DC SD TX, Houston Division). However, the realm of the described irregularities expanded to include defamation and discredits disseminated in other States. Thus, in addition to suing certain legally culpable parties in the State of Texas, an action was commenced in the United States District Court for the Southern District of New York, No. 83 CIV 6896 (M.E.L.) (S.D. TX Tr. Vol. II, p. 52, l. 18-19, III. p. 119,

l. 19, -p. 120, l. 23). This development appeared to personally infuriate elements influential in the Austin, Texas Regional Office and the Houston, Texas District Office of the Internal Revenue Service such that they broadened their irregularities from mere fabrication of civil liability to the surreptitious and fraudulent manufacture of criminal charges against the accused. The trial Court refused to cooperate with the accused's efforts to expose the relevant fraud and Governmental irregularities (S.D. TX Doc. No. 78, Tr. Vol. II, p. 4, l. 1-14, p. 14, l. 3-12). Thus, appellate measures were invoked to attain rectification of the improprieties incurred in the trial Court (S.D. TX Doc. Nos. 113 and 114; US DC WD TX Ap. pp 25-30)

The Presiding Judge in the trial Court, the Honorable Carl O. Bue, Jr., occupied a role in the litigation both judicial

and extra-judicial in nature, the latter as a member of a prominent Houston, Texas law firm which could further its personal and business objectives by the suppression and aborting of Appellant's Constitutional and civil rights claims related to an underlying fraudulently fabricated State conviction from the District Court of Montgomery County, Texas, No. 11,064, docketed in the United States District Court for the Southern District of Texas, Houston Division, as No. 71-H-228, on the accused's removal petition.

The noted bias and personal interests were intermittently interjected both overtly and insiduously throughout the trial resulting in the "conspiracy to harass, incriminate and convict the accused" encompassing Issue No. X in the Statement of Issues in the "Brief of Appellant" on Appeal below.

Also, the trial Court sentence in-

cludes unconstitutional successive penalties consisting of a one year confinement with reference to 26 U.S.C. Sec. 7212(a) followed by a probation period referenced to 18 U.S.C. Sec. 1505. The probation conditions of the Judgment form were not endorsed as served on the accused (SD TX Doc. No. 110, Ap. p. 9), and Appellant presumed the officials recognized the unconstitutional character of the document without intentions of enforcing the terminology until correspondence was received proposing a probation revocation which proposal was granted by the trial Court without setting or permitting a hearing on Appellant's Motion traversing the revocation request, preliminary to Appellant's arrest and subquent prolonged illegal detention within the jurisdiction of the United States District Court for the Western

District of Texas, El Paso Division, which erroneously deferred jurisdiction to the trial Court (US DC WD TX Doc. Nos. 7, 8, 11, 12, 13, 14 and 15, Ap. pp 5-7, 16-18 and 31).

The arrest and detention procedures utilized prevented Appellant from assisting with the post conviction appellate brief within the time prescribed by Fed. Rules Ap. Proc., Rule 31(a), 28 U.S.C. He was notified by United States Mail of a specific date to surrender to Big Spring Camp, Federal Correctional Institution, but before the surrender date expired and while petitions for habeas corpus and for relief in the nature of error coram nobis were pending, the arrest occurred abruptly at Livingston, Texas without allowing legal material to accompany the accused. Additionally, the Clerk of the sentencing Court did not furnish the accused attorney the

record or even the docket sheet of post conviction filings or proceedings therein, thereby, aggravating the irregularities attending the detention.

(ii) Chronology of Proceedings and Dispositions Below.

(a) Pre-trial Through Direct Appeals.

Initial charges were filed against the accused on January 10, 1985. Magistrate's Case No. H-85-12M, US DC SD TX, Houston Division (Docket Sheet p. 2). A Four Count Indictment evolved from the described charges filed with the Clerk under date of February 7, 1985 (SD TX Doc. No. 1).

A Motion for Change of Venue was duly submitted on February 12, 1985 (SD TX Doc. No. 2, Brief of Appellant, Issue No. I, pp 1 and 8-9, Petition for Writ of Certiorari, pp i and 6-7, U.S. Sup. Ct., No. 86-1422), but it was never granted or formally addressed.

Appellant requested recusal of the trial Judge by affidavits of February 19, 1985, which are not properly isolated among the docket entries (SD TX Doc. Nos. 6 and 20), but the requests were not addressed . Also, the Argument was raised at pp 2 and 9-12 in the Brief of Appellant, No. 86-2436, USCA, 5th Cir., Petition for Writ of Certiorari, Supra., pp i and 7-9, but the issue was not addressed by the Court of Appeals, nor the orders denying certiorari entered by the Supreme Court.

The crux of Appellant's case related to a Rules 12, 15 and 16 Motion in Limine and for Dismissal to establish the fraudulent nature of the Indictment and the absence of an "ongoing" proceeding within the contemplation of Title 18, United States Code, Section 1505, or Title 26, United States Code, Section 7212(a), filed by Appellant (SD TX Doc. No. 8), but which the trial Court never enter-

tained. The issue was presented to the Court of Appeals at pp 2 and 12-14, Brief of Appellant, Supra., and the Supreme Court at pp i and 10-11, Petition for Writ of Certiorari, Supra.

Appellant objected to dilatory tactics by the Government by Motion (SD TX Doc. No. 17) which was unconstitutionally disregarded by the trial Court. The point was observed by the Court of Appeals from pp 2 and 14-16 in the Brief of Appellant, Supra., in affirming the trial Court, and it was presented in the Petition for Writ of Certiorari, Supra., at pp i and 11-12).

The discovery effort of Appellant was repeated at the trial stage to offer the original or equivalent records and officials from the Internal Revenue Service to establish a fraud and entrapment objective by personnel within the agency influenced to discredit Appellant, but the trial Court declined enforcement of the subpoena duces tecum. The issue was

included at pp 2 and 16-17 in the Brief of Appellant, Supra., but the Court of Appeals circumvented confronting the issue on its merits, and the Supreme Court declined to exercise certiorari discretion as it was presented in the Petition for Writ of Certiorari, Supra., pp i and 12-13.

Appellant's retained counsel abstained from providing Constitutionally mandated effective assistance, apparently derived from the conflict of interest affecting the Presiding Judge himself. One instance of the described malfeasance was presented to the trial Court as described at pp 2 and 17-20, Brief of Appellant, Supra., and pp ii and 14-15, Petition for Writ of Certiorari, Supra., involving the neglect to protect the right of Appellant to a fair and impartial jury of his peers in the striking of a member of the petit jury because she was a resident, educated adult of Negro ancestry.

Similarly, such counsel's invocation of the rule precluding witnesses for the accused from reviewing the trial session prompting absences for recall testimony was related by the Brief of Appellant, Supra., pp 2 and 20-21, and the Petition for Writ of Certiorari, Supra., pp ii and 16. At the pre-trial conference which was not recorded, the Presiding Judge by oral 16. At the pre-trial conference which was not recorded, the Presiding Judge by oral Order ruled he would not consider Appellant's pro se motions and requests, which event tied Appellant's hands in conjunction with the probability of repetitious contempt citations.

Appellant's counsel engaged substantive nonfeasance by neglecting to prevent trial Court error in permitting Government witnesses to give hearsay testimony that a "proceeding" was "ongoing" preliminary pertinent to the allegations of the

Indictment where the Government and the trial Court had declined to honor the accused's motion to avail the evidence from which their testimony allegedly derived (SD TX Doc. No. 8). This issue and argument was presented a pp 3 and 21-23, Brief of Appellant, Supra., and pp 17-18, Petition for Writ of Certiorari, Supra., but it was totally circumvented by the Opinion of the Court of Appeals, and not remedied by the orders denying certiorari. The malfeasance of Appellant's counsel in refusing to prevent introduction of prejudicial, remote and irrelevant evidence of antique guns owned by Appellant's father seized from the owner's residence at Livingston, Texas without any proximity between such items and the allegations of the Indictment was subject to objection by Appellant, pro se, only after the trial, and it is preserved at pp 3 and 23-25, Brief of Appellant, Supra., and pp ii and 19-20, of the Petition for Writ of

Certiorari, Supra. However it was confused by the Court of Appeals, which erroneously labeled the subject residence as owned by Appellant contrary to the evidence adduced revealing the ownership incontestably in Appellant's father without any holding out or reputation of ownership in the accused, Appellant.

Appellant's formal characterization of the trial Court proceedings as the apex of a fraudulent entrapment conspiracy extending to Appellant's retained counsel was presented at pp 3 and 25-33, Brief of Appellant, and pp ii 20-28, Petition for Writ of Certiorari, Supra. but no appellate response attached to the issue

Post conviction relief was initiated by a Motion to Correct Illegal Judgment filed during November of 1987 in the sentencing Court which the substituted Presiding Judge Black improvidently refused to set for a plenary hearing or grant otherwise. A timely Appeal was

perfected (Docket Sheet or record not provided by Clerk) followed by a Petition for Writ of Habeas Corpus and in the Nature of Error Coram Nobis filed in the jurisdiction of Appellant's detention, the Western District of Texas, El Paso Division, which by Order erroneously deferred the exercise of jurisdiction the case (WD TX Ap.pp 5-7 and 16-18). An Appeal was perfected (WD TX Ap. p 3, entry of 9-26-88, but the Court of Appeals again declined to judiciously resolve the issues presented with proper supplementation by Appellant (No. 88-1758/88-2018, USCA, 5th Cir.).

REASONS FOR GRANTING THE RELIEF SOUGHT

SUMMARY OF REASONS

The subject prosecution was insupportable with regard to the facts, law and procedure undertaken by the trial Court and its Officers to incite and rationalize the unconstitutional Indictment of the accused.

The allegations that such Appellant threatened to "blow Hamilton to pieces" proposed by the Government were unlawfully fabricated as the jury found (SD TX Doc. No. 90, counts 1 and 1), and the charge that the accused threatened to harm Revenue Officer Hamilton were unfounded as a fair presentation of the facts and law, without resort to libelous fabrications, would have produced (SD TX Doc. No. 90, counts 3 and 4). United States v Hylton, 558 F. Supp. 872 (SD TX 1982), affirmed 710 F.2d 1106 (5th Cir. 1983).

The precipitate in the United States

District Courts below was to unconstitutionally refrain and abstain from consideration of the merits of habeas corpus relief and a remedy in the nature of error coram nobis, and the Court of Appeals again neglected to address the determinative issues, which were decided by the respective panels contrary to the Fifth Circuit precedent of United States v Hylton, Ibid., relevant to First Amendment freedoms of the accused attorney.

Also, the sentencing orders entered by the trial Court contravened the established and recently reiterated standards precluding successive sentences for identical conduct announced by the Supreme Court in Ball v United States, 470 U.S. 856 (1985), even though it was acknowledged by the Fifth Circuit in United States v Thomas, 810 F.2d 478 (5th Cir. 1988).

ARGUMENT

I. THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT IN FAILING TO ADDRESS THE FEDERAL QUESTIONS DULY PRESENTED UNDER THE TEN DISTINCT ARGUMENTS ON DIRECT APPEAL AND REITERATED IN POST JUDGMENT PROCEEDINGS INVOKED THE JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

It remains notorious from all perspectives except the judgments, orders and opinions of the courts below that the instant prosecution wrongfully emanated from retaliatory objectives and actions by tangents of the State Bar of Texas infuriated by the accused attorney's assertion of his civil rights in the context of prolonged litigation resulting from the illegal and unconstitutional prosecution of Cause No. 11,064 in the District Court of Montgomery County, Texas (See Proposition Nos. III-X, inclusive, Request for Admissions, WD TX Doc. No. 11, Ap. pp 25-30). Haines v Kerner, 404 U.S. 519 (1972). The insufficiencies in the record are products of abusive

trial Court refusal to enforce Appellant's Rules 12, 15 and 16 Motion in Limine and for Dismissal seeking Internal Revenue Service records shedding light on ulterior motives and fraud leading to conjured assertions comprising Count One and Count Two of the Indictment (SD TX Doc. Nos. 1 and 8). Fed. Rules Cr. Proc., Rules 12, 15, 16 and 17, 18 U.S.C.; In re Irving, 600 F.2d 1027 (2nd Cir. 1979), certiorari denied 444 U.S. 866 (1979); United States v Moreno, 536 F.2d 1042 (5th Cir. 1976), rehearing denied 543 F.2d 1175 (5th Cir. 1976).

The trial Court has not furnished the opportunity for a plenary hearing on the relief sought pursuant to Title 28, United States Code, Section 2241, et seq., and it placed the accused in a detention posture incompatible with the timely designation of the pertinent appellate record. However, the complete record reflects the absence of a hearing on the

application for a writ of habeas corpus and in the nature of error coram nobis based upon the illegality of the conviction (SD TX No. CA-H-87-4014, Doc. No. 1, ancillary to Cr. No. H-85-28). 29 Am Jur2d Evidence Sec. 57; Fed. Rules Evid. Rule 201(d), 28 U.S.C.; Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C.; Title 28, United States Code, Sections 1651, 2241, 2242, 2243 and 2255.

On the other hand, the United States District Court for the Western District of Texas below has deferred jurisdiction in favor of the trial Court WD TX Doc. Nos. 7 and 12, Ap. pp 5-8 and 9-16).

Though one might peripherally argue that the issues raised in the El Paso Court were moot as the appeals were consolidated, the contravention of standards inherent in United States Code, Const. Art. 1, Sec. 9, Cl. 2, in perspective with legislation effecting delay in habeas corpus relief merits appellate review.

Title 28, United States Code, Section 2241, 2242, 2243 and 2255; United States v Dean, 752 F.2d 535 (11th Cir. 1985), rehearing denied en banc 756 F.2d 885 (11th Cir. 1985), certiorari denied 107 S. Ct. 97 (1986). As there was no evidence to support denial of the relief, failure to entertain evidence and grant the duly submitted application is reversible error. Fed. Rules Evid. Rules 401, 402 and 403, 28 U.S.C.; United States v Furey, 441 F. Supp. 1048 (E.D. Pa. 1980), at p. 1070, certiorari denied 451 U.S. 913 (1980); United States v Kabaneh, 837 F.2d 1249 (5th Cir. 1988).

II. THE OPINION OF THE COURT OF APPEALS BELOW GROSSLY MISREPRESENTS A CONTROLLING ISSUE BY ASSERTING THAT APPELLANT'S DISCOVERY MOTION WAS LIMITED TO SUBSTANTIATING THAT HE OWED BACK TAXES."

The Opinion, in the post conviction Appeal, at p. 2, lines 10-18, vastly and vindictively misrepresents an issue presented on direct Appeal and reiterated

in the habeas corpus Appeal. It recites that the application alleges:

> "(1) The trial Court abused its discretion in refusing his request for records of the IRS substantiating that he owed back taxes."

First of all, the genuine IRS records would establish that Appellant had no income tax liability in the pertinent interim, but the objective in obtaining IRS records was greater than merely reflecting the absence of income tax liability, and such purpose covered revelation of (1) a fraudulent design and pattern calculated to harass and discredit the accused as a lawyer who served as a business consultant and (2) an entrapment endeavor which consumed IRS personnel giving rise to counts three and four of the contested Indictment. In re Irving, Supra. Issue No. I among the Statement of Issues, Supplemental Brief of

Appellant, p. 2, lines 2-8, and the Argument thereunder, pp 8-10, introduces the relevant evidentiary and legal authorities justifying a hearing on the issues presented by the Brief of Appellant on direct Appeal, which were not addressed by the Court of Appeals. The particularized issue on compulsory process and confrontation of witnesses was presented as No. III, p. 2, lines 7-13, No. V, p. 2, lines 18-23, No. VIII, p. 3, lines 6-11, and No. X, p. 3, lines 22-25, in the Brief of Appellant, No. 86-2436 or 88-1758, USCA, 5th Cir., and the corresponding arguments developed under each issue. Fed. Rules Evid. Rule 201(d), 28 U.S.C.; Rocky Mountain Helicopters v **Bell Helicopter, 491 F. Supp. 611 (ND TX 1979), affirmed in part, reversed in part, 715 F.2d 166 (5th Cir. 1983).**

III. THE COURT OF APPEALS MISCONSTRUED AN ALTERNATIVE CONTROLLING ISSUE BY NEGLECTING TO ACKNOWLEDGE THAT SUBORDINATED

HEARSAY TESTIMONY PRESENTED BY THE GOVERNMENT WAS INADMISSIBLE AS INFERIOR TO THE BEST EVIDENCE WHERE THE GOVERNMENT AND THE TRIAL COURT HAD DECLINED TO FURNISH THE ORIGINAL OR PLENARY RECORD RELEVANT TO THE ISSUE IN RESPONSE TO APPELLANT'S DILIGENT AND APPROPRIATELY SUBMITTED DISCOVERY MOTION AND TRIAL SUBPOENA DUCES TECUM.

The Government circumvented production of the records sought by the accused's discovery motion by placing one Joseph Hamilton on the witness stand to give his conclusion that a "proceeding" or civil investigation was "ongoing" regarding the tax liability of Appellant. The Supreme Court, as was the Court of Appeals, is requested to take judicial notice of standard procedures within the United States Government that written memoranda between subordinate employees and their superiors and supervisors are routinely and manditorily prepared, filed and accumulated logging official action involving even daily notes of field representatives purportedly engaged in furtherance of employment or duty. Fed.

Rules Evid. Rule 201(d), 28 U.S.C.; Rocky Mountain Helicopters v Bell Helicopter, Supra.

Despite Appellant's timely motion for production of records essential to his defense, enumerating pertinent IRS records (SD TX Doc. Nos. 8 and 55) the Government declined disclosure of the records, and the Presiding Judge erroneously refused to grant the pro se motion. Nevertheless, the witness was unconstitutionally permitted to utter before the jury that he was furthering an authorized IRS proceeding applicable to Appellant, the accused (See SD TX Doc. Nos. 8, 55 and 71). United States v Nixon, 448 U.S. 683 (1974).

IV. THE COURT OF APPEALS GAVE INSUFFICIENT CONSIDERATION TO IMPAIRMENT CONDITIONS ATTENDING APPELLANT'S ARREST AND DETENTION IN CONJUNCTION WITH THE ABILITY TO PROPERLY APPEAL APPEAL DENIAL OF HIS POST CONVICTION PETITION.

To implement the irregularly developed

appellate record, the Supreme Court, as were the Court of Appeals and the trial Court, is authorized to take judicial notice from the U. S. Department of Justice, Bureau of Prisons, computer printouts and reasonably infer from standard incarceration transit practices in conjunction with the Court Order directing Appellant to surrender to Big Spring Camp, Federal Correctional Institution, that his arrest contrary to such Order comprised a surprise with prolonged restrictions inconsistent with proper assembly and filing of legal materials within a statutorily prescribed time. Fed. Rules Evid. Rule 201(d), 28 U.S.C.

Also, to the extent that Government counsel urge that the record is insufficient, jurisdiction is vested by Title 28, United States Code, Sections 1651 and 2241, for a Federal appellate court to act in aid of its inherent jurisdiction pursuant to its original

habeas corpus authorization to discover the facts and effect the fair administration of justice. Haines v Kerner, 404 U.S. 519 (1972); also, see Hodge v Markley, 339 F.2d 1013 (7th Cir. 1964), certiorari denied 390 U.S. 904 (1965).

A verified motion to file a corrected Brief conveying the above facts was submitted by Appellant in the Court of Appeals below, set for ruling without oral argument on May 16, 1988, and the Supreme Court is requested to take judicial notice of its contents which have not been traversed. Fed. Rules Evid. Rule 201(d), 28 U.S.C.

V. THE BRIEFS OF APPELLANT AND THE RECORD ON APPEAL AS DULY SUBMITTED SUFFICIENTLY REFLECTED, IDENTIFIED AND PRESERVED THE TRIAL COURT ERRORS FOR APPELLATE PURPOSES.

The Opinion from below at p. 3, lines 5-11, states correctly that the original Brief alleged:

> "the district court erroneously refused to take notice of his pro se motions during the original prosecution."

However, it goes on to recite, incompatibly, that the issue was not raised in the trial Court. The panel should have fully evaluated, preliminary to a ruling, the Brief of Appellant, No. 86-2436 or 88-1758, Supra., pp 1-3, Issue Nos. I, II, III, V, VIII and X, and the corresponding arguments thereunder, reflecting the multitude of pro se motions and efforts advanced by the accused before the trial Court, the most significant of which was the Rules 12, 15 and 16 Motion in Limine and for Dismissal filed and docketed as entry No. 8 in the appellate record on direct Appeal, No. 86-2436, USCA, 5th Cir. Sorrells v United States, 287 U.S. 435 (1932); In re Irving, 600 F.2d 1027 (2nd Cir. 1979), certiorari denied 444 U.S. 866 (2nd Cir. 1979).

VI. THE NEGLECT OF THE COURT OF APPEALS' PANEL ON DIRECT APPEAL TO ADDRESS CONTROLLING ISSUES CANNOT INVOKE PRINCIPLES OF RES JUDICATA OR COLLATERAL ESTOPPEL TO INHIBIT THE INHERENT PREROGATIVE OF A COURT OF COMPETENT JURISDICTION TO RECTIFY FRAUD AT ANY STAGE NOT AFFECTED BY LACHES.

The conduct by State Bar of Texas elements ultimately influencing personnel within the Internal Revenue Service, Austin, Texas Regional Office, giving rise to the Indictment of Appellant in the United States District Court for the Southern District of Texas, Houston Division, Cr. No. H-85-28, represented classic fraud and entrapment manipulations calculated to discredit Appellant as a lawyer and professional business consultant. Sorrells v United States, 287 U.S. 435 (1932).

Thus, Appellant's discovery motion, composed to reveal the relevant fraud, should have been granted, and the mammoth error of the trial Court in abetting the concealment of relevant evidence is not rectified by the acquiescence of the appellate panel refusing to entertain the issues on direct Appeal and another panel illusorily connoting invocation of res judicata or collateral estoppel principles to the circumvented issues upon applica- for post conviction relief. United States v Dean, 752 F.2d 535 (11th Cir. 1985), rehearing denied en banc 756 F.2d 885 (11th Cir. 1985), certiorari denied 107 S.Ct. 97 (1986).

The Brief of Appellant, No. 86-2436 or 88-1758, Supra., isolates ten particularized issues in behalf of the accused, but the Government failed to appreciate or respond to the respective issues in their joint and severable imports. and the

nonfeasance is unfortunately adopted by the Opinion of January 31, 1989 at p. 3, lines 9-22). Fed. Rules Cr. Proc., Rule 35, 18 U.S.C.; Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C.; Fed. Rules Evid. Rule 201(d), 28 U.S.C.; Title 28, United States Code, Section 2255; United States v Nixon, 448 U.S. 683 (1974).

VII. A SUBSTITUTING TRIAL COURT JUDGE SHOULD TAKE JUDICIAL NOTICE OF "PRIOR PROCEEDINGS IN THE CASE" INCLUDING THE RECORDED MANNER AND FORM CONTROLLING ISSUES WERE DEVELOPED, PRESENTED AND PRESERVED.

At p. 4, lines 9-15, the Opinion quotes Rule 4(b) of the Rules Governing Section 2255 Proceedings that dismissal of a motion is proper:

> "if it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court."

However, the panel aberated fundamentally in concluding that a condition for

Appellant, being cognizant of the Court of Appeals' failure to address the resolving issues on direct Appeal, contemplated that the substituting Presiding Judge in the trial Court would take judicial notice of the outstanding issues upon deliberating the motion to correct illegal judgment as filed in the sentencing Court, but the substitute Judge, exhibiting similarly disqualifying extra judicial bias and personal interests as characterized his predecessor, erroneously made no setting on the motion preliminary to denying it. Fed. Rules Cr. Proc., Rule 35, 18 U.S.C.; Fed. Rules Civ. Proc., Rule 60(b), 28 U.S.C.; Title 28, United States Code, Sections 455 and 2255.

Thus, it became incombent upon the appellate panel below to take judicial notice of the proceedings on post conviction deliberations and grant habeas corpus relief on the evidence adduced or remand for a plenary hearing (WD TX Ap.

pp 25-30, Supplemental Brief of Appellant, pp 8-10). Fed. Rules Civ. Proc., Rules 36 and 81(a), 28 U.S.C.; Fed. Rules Evid. Rule 201(d) and (f), 28 U.S.C.; Haines v Kerner, 404 U.S. 519 (1972).

VIII. ERROR IN THE CASE DERIVED FROM THE FAILURE OF EACH PRESIDING JUDGE BELOW TO SET AN EVIDENTIARY HEARING ON THE PETITION FOR WRIT OF HABEAS CORPUS AND IN THE NATURE OF ERROR CORAM NOBIS SHOWING ON ITS FACE WITH A COPY OF THE CONTESTED JUDGMENT ATTACHED THERETO THAT THE JUDGMENT INCLUDED ILLEGAL CONSECUTIVE SENTENCES.

At p. 4, lines 15-17, the Opinion from below relates that Appellant contests the legality of his sentence on the basis that the respective counts involve identical conduct, but it fallaciously concludes that such issue was not presented to the trial Court even though the subject Judgment of conviction was attached to the Petition.
depicting that one count of the conviction under the Indictment was pursuant to Title 18, United States Code,

Section 1505, and the other count of the conviction was pursuant to Title 26, United States Code, Section 7212(a), both arising out of identical conduct (SD TX Doc. No. 1, Ap. pp 18-19;(WD TX, Doc. No. 3, Ap. 2), and any skepticism provoked by the sentencing terms should have been verified by reference to the record or a plenary hearing. Fed. Rules Cr. Proc., Rule 35, 18 U.S.C.; Ball v United States, 470 U.S. 856 (1985); United States v Thomas, 810 F.2d 478 (5th Cir. 1988).

The illegality of the conviction procedure is effectively admitted by Appellee (WD TX Ap. pp 25-30, and the contents of the Opinion from below do not justify refusal to reverse and render or remand. Fed. Rules Civ. Proc., Rules 36 and 81(a), 28 U.S.C.; Title 28, United States Code, Sections 2241 and 2255; Harris v Nelson, 394 U.S. 286 286 (1969).

This point was raised as Issue No. II in the Supplemental Brief of Appellant (following consolidation) below, and illuminated under the corresponding argument, but neither brief of the Government offers a single explanation supporting the sentencing procedure, and the Opinion, in adopting such nonfeasance, violates acknowledged Fifth Circuit precedents. United States v Thomas, 810 F.2d 478 (5th Cir. 1988).

Similarly, as related by Issue No. III, and the corresponding argument, in the Supplemental Brief of Appellant as set forth to the District Court, but contrary to the Opinion's import, the resentencing of Appellant under an alleged revoked probation status was illegal because he had engaged no culpable conduct nor violated any condition precedent to his freedon (WD TX Doc. No. 1, p. 6, paragraph III, Ap. pp 25-30,

and particularly Proposition No. XIII). Fed. Rules Civ. Proc., Rules 36 and 81(a), 28 U.S.C.; Title 42, United States Code, Sections 1981, 1982 and 1983; United States Code, Const. Amends. V and XIII; McCann v Coughlin, 698 F.2d 112 (2nd Cir. 1988); Ball v United States, 470 U.S. 856 (1985).

IX. REFUSAL TO OBTAIN A CLARIFYING INSTRUCTION ON THE DEFENSE OF ENTRAPMENT WAS ONE OF MULTIPLE INEFFECTIVE ASSISTANCE OF COUNSEL INSTANCIES IN THE SENTENCING COURT REFLECTIVE OF A BROADER FRAUDULENT OBJECTIVE INITIATED BY ELEMENTS OF THE STATE BAR OF TEXAS CALCULATED TO DIMINISH APPELLANT'S POTENTIAL AS A LAWYER.

The Opinion from below at p. 4, lines 19-24, and p. 5, lines 1-5, touches upon entrapment, but it erroneously concludes the accused is bound by vindictive, vexatious and ineffective assistance of counsel. Title 28, United States Code, Section 1654; Warrick v Commissioner, 173 F.2d 905 (8th Cir. 1949); Dillon v Duckworth, 751 F.2d 805 (7th Cir. 1984),

affirmed 471 U.S. 1107 (1985).

Appellant's Brief, No. 86-2436 or 83-1758/88-2018, USCA, 5th Cir., characterizes and details the ineffective assistance of counsel irregularities generally at p. 3, Issue No. X, with corresponding argument at pp 25-32 thereof. Kimmelman v Morrison, 477 U.S. 365 (1986). Thus, aberation by the panel that the irregularity was not preserved merits review and reversal based on the inconsistencies between decisions in other Fifth Circuit cases as well as Supreme Court precedents with the immediate results below. United States v Moreno, Supra.; United States v Hylton, Supra.; Dillon v Duckworth, Supra.

Appellant suggested by Memorandum, preliminary to consolidation of the dockets below, to the Court of Appeals the propriety of applying the rationale in United States v Bey,

853 F.2d 702 (3rd Cir. 1988), giving due regard to the ruling of the Supreme Court in Matthew v United States, 99 L.Ed.2d 54 (1988), holding that where evidence is sufficient for a reasonable jury to find entrapment of the accused in a Federal criminal prosecution, the accused is entitled to a jury instruction on the defense of entrapment even though he denies one or more elements of the Indictment. The trial Court did not give an informative jury instruction directed to the issue of entrapment (SD TX Doc. No. 95), and the ineffectiveness of the accused's retained counsel in neglecting to obtain the indicated instruction is an element of Argument X, under Issue No. X, Brief of Appellant, Supra., beginning at p. 25 thereof and enumerated in the second complete paragraph at p. 28 thereof, continuing to the Conclusion of the

Brief at p. 33 thereof. The point is further emphasized in the Supplemental Brief of Appellant, following consolidation, at p. 2, Issue No. IV, and the corresponding argument at pp 13-14 thereof.

Fifth Circuit precedents do not justify the neglect of counsel in failing to secure a clarifying instruction on the defense of entrapment, but precents in other jurisdictions and circuits have held traditionally that a plea of guilty is a prerequisite to the defense of entrapment. Therefore, Appellant submits that it would have been proper for the Court of Appeals to follow United States v Bav. Supra., and reverse the Judgment to require production of the evidence sought through the accused's Rules 12, 15 and 16 Motion in Limine and for Dismissal in the trial Court to manifest the evidence pertinent to entrapment preliminary to a proper jury instruction.

Argument III, under Issue No. III, Brief of Appellant, No. 86-2436 or 88-1758/88-2018, details this original effort (SD TX Doc. Nos. 6, 8, 20, 55, 56 and 57/3-6-1986), and Argument V, Issue No. V, sets forth trial stage efforts (SD TX Doc. Nos. 55 and 71) accompanied by lacka-daisical input and malfeasance from the accused's retained counsel preceding the trial Court's refusal to enforce a subpoena duces tecum for the pertinent evidence. United States v Nixon, 433 U.S. 683 (1974); **Ex Parte Uppercu, 239 U.S. 435 (1915).**

CONCLUSION

Review in the nature of error coram nobis should be granted, forthwith, and the Supreme Court should find, furthermore, that the prosecution giving rise to the proceedings below was an illegal, retaliatory and entrapment endeavor wherein the trial Court unconstitutionally

prevented the accused from manifesting relevant facts through routine discovery procedures; that the Judgment of conviction is repugnant to due process standards under the Fifth Amendment to the United States Constitution; and that the contested Judgment should be reversed and voided with absolute expungement of derivative records.

Respectfully submitted this 9th day of May, 1989.

Elijah W. Ratcliff
APPELLANT, PRO SE

Elijah W. Ratcliff
P. O. Box 1529
Ypsilanti, Michigan 48197
Ph. 313 434-0056

AFFIDAVIT OF SERVICE

Appellant certifies under penalties of perjury as if executed before a proper notary public that a copy of the foregoing Jurisdictional Statement was served on opposing counsel by first class United States Mail addressed to:

Hon. William C. Bryson
Acting Solicitor General
U. S. Department of Justice
Tenth St. and Constitution Ave.
Washington, D. C. 20530

and

Tenth St. and Constitution Ave.
Washington, D. C. 20530

and

Hon. Henry K. Oncken
United States Attorney
Southern District of Texas
515 Rusk Avenue
Houston, Texas 77002

this 10th day of May, A. D., 1989.

Elizabeth W. Peterfreund
AFFIANT

88-1907

Supreme Court, U.S.
FILED
MAY 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1988

ELIJAH WHITE RATCLIFF,
APPELLANT
VS
UNITED STATES OF AMERICA,
APPELLEE

ON APPEAL FROM THE UNITED
STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

APPENDIX TO JURISDICTIONAL
STATEMENT

APPELLANT, PRO SE

Elijah W. Ratcliff
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48197
Ph. 313 434-0056

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NO. 88-1758/88-2018

ELIJAH WHITE RATCLIFF, PETITIONER
versus
RICHARD THORNBURGH Attorney General of the United States, et al. APPELLEES

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CURCUIT

(Filed Jan 31 1989)

Appeal from the United States District Court for the Western District of Texas Before Reavley, Politz, and Jones, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal and was taken under submission on the briefs on file.

ON CONSIDERATION WHEREOF, it is now ordered and adjudged by this Court that the Judgment of the District Court is affirmed.

January 31, 1989

ELIJAH WHITE RATCLIFF, PETITIONER-APPELLANT
versus
RICHARD THORNBURGH, Attorney General of the United States, et al.,

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(Filed Jan 31 1989)

PER CURIAM:

At issue in these consolidated appeals are the denial of Ratcliff's motion to correct illegal judgment pursuant to 28 U.S.C. (2255 and Federal Rule of Criminal Procedure 35, by the Southern District of Texas, and the dismissal of a similar pleading filed in the Western District of Texas. We affirm. We further caution Ratcliff

that his propensity for filing a myriad of baseless pleadings has not gone unnoticed and that should he continue to do so in the future, this Court will surely issue sanctions, and the district court should strongly consider doing the same thing.

A. The Southern District Proceedings

In December, 1987, Ratcliff's probation was revoked and he was ordered to serve 18 months, to pay a $75.00 special assessment and costs. At about the time this motion was underway, Ratcliff filed motions to correct illegal judgment pursuant to 28 U.S.C. (2255 and Federal Rule Criminal Procedure 35. These motions allege:

1. The trial court abused its

discretion in refusing his request for records of the IRS substantiating that he owed back taxes;

2. He was denied a right of compulsory process under the Sixth Amendment by the trial court's refusal to enforce a subpoena duces tecum against IRS;

3. The trial court abused its discretion by permitting the government to present hearsay testimony that a "proceeding" was under way regarding his back tax liability; and

4. The district court erred in permitting the government to present evidence of fire arms owned by his father.

The district court denied this motion insofar as it pertained to Rule 35, and it dismissed the habeas corpus contention pursuant to Rule 4(b) of the supplemental rules governing such procedings.

Ratcliff initially riled a brief in this Court raising three issues. His original brief alleged that he was improperly ordered to undergo psychiatric examination, that his speedy trial right was violated,

and the district court erroneously refused to take notice of his pro se motions during the original prosecution. These issues, none of which was raised in the pertinent proceedings in the trial court, need not be considered for that reason alone. McNeil v Blackburn, 802 F.2d 830. 832 (5th Cir. 1986). The latter two issues were resolved against Ratcliff in his direct appeal from conviction and may not therefore be litigated in a habeas corpus proceeding. United States v Ratcliff, 806 F.2d 1253 (5th Cir. 1986), cert. denied, 107 S.Ct. 1625 (1987); United States v Kalish, 780 F.2d 506, 508 (5th Cir. 1986), cert. denied, 106 *s.Ct. 1977 (1987). The challenge to the psychiatric evaluation is completely frivolous, because

government requested it, Ratcliff was found competent to stand trial, and its finding simply has no effect on the the validity of his conviction or sentence.

After filing his brief, Ratcliff purported to file a "corrected" brief which would have raised ten additional issues on appeal. This Court refused to accept that brief, because it did not comply with our apropriate rules for supplementation. Moreover, as the United States observed, Ratcliff filed a motion to correct the brief after the United States had filed its initial brief, and this would have required it to re-brief the entire case.

Ratcliff also contends in the November 14 brief, which we allowed filed as a "supplemental brief", that he was entitled to a hearing

on his federal petitions. We disagree. Rule 4(b) of the supplemental rules governing (2255 proceedings authorizes a district court to order summary dismissal "if it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court." That condition was abundantly fulfilled here. Ratcliff then alleges that he was illegally sentenced pursuant to counts three and four of the indictment because they involve the same conduct. This issue was not presented to the trial court, and we make no ruling concerning it. Third, he alleges that the trial court failed to give him an entrapment instruction. This issue was not preserved in the original trial, however, because

Ratcliff claims that his trial counsel was ineffective for failing to raise entrapment. Neither the issue of ineffectiveness nor that of the entrapment instruction was previously addressed to the district court, and we will not consider them in the first instance. Finally, in a totally conclusory fashion, Ratcliff alleges that his probation was illegally revoked without any illegal or improper conduct on his part. That is a matter which he should have appealed in regard to the revocation of his probation.

B. The Western District Proceedings

In November 1988, Ratcliff requested permission to file a "supplemental brief" purportedly to include issues arising out of the consolidated appeal from El Paso.

We authorized this filing and a consolidation of the appeals, because it enables us to consolidate treatment of these meritless cases and to resolve any doubts that, to date, Ratcliff has simply raised no cognizable legal issue.

To begin with, Ratcliff's supplemental brief filed November 14 acknowledges that the proceeding he filed in the Western District of Texas is substantially identical to that filed in the Southern District of Texas. The Western District of Texas declined to rule on Ratcliff's (2255 motion because such a motion must be filed before the sentencing court. We find no fault with its action, and Ratcliff in any event waived any complaint he may have about it, because he did not include in either of his recent briefs, filed November 7 and

November 14, 1988, any reasoned argument against the Western District's action.

We strongly urge Ratcliff to think carefully before he files pleadings in the future. The judgments of the district courts are AFFIRMED.

No. 88-1758

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

ELIJAH WHITE RATCLIFF, Petitioner-Appellant

versus

RICHARD THORNBURG, Attorney General of United States, et al., Respondent-Appellees

Appeal from the United States District Court for the Western District of Texas

No. 88-2018

UNITED STATES OF AMERICA, Plaintiff-Appellee

versus

ELIJAH W. RATCLIFF, Defendant-Appellant

Appeal from the United States District Court for the Southern District of Texas

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion 01-31-89, 5 Cir., 198_, _____F.2d ____)

(March 16, 1989)

Before REAVLY, POLITZ and JONES, Circuit Judges.

PER CURIAM:

(<) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestion for Rehearing En Banc

is also DENIED.

ENTERED FOR THE COURT:

S/Edith H. Jones 3/13/89

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA	CRIMINAL
V	HCR-85-28
Elijah W. Ratcliff	Ancillary to CIVIL
----------	ACTION CA-H-87-4014

ORDER OF DISMISSAL

The defendant has filed a motion to vacate sentence pursuant to 28 U.S.C. 2255.

The Court has carefully considered the present motion along with the record of the prior criminal pro-

ceeding and concludes that the defendant is entitled to no relief. Therefore, it is

ORDERED that the motion is summarily DISMISSED pursuant to Rule 4(b) of the Rules Governing Section 2255 Proceedings in the United States District Courts.

The Clerk will send a copy of this Order to all parties.

DONE at Houston, Texas, this 22nd day of December, 1987.

s/Norman Black

United States District Judge

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

ELIJAH WHITE RATCLIFF JUDGMENT IN

V A CIVIL CASE

EDWIN MEESE, etal [sic]

(Filed Aug221988) CASE NUMBER:

EP-88-CA-108

(xx) Decision by Court. This action came to considered before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the Magistrate's Report and Recommendation are ADOPTED. The application for writ of habeas corpus is DISMISSED.

IT IS SO ORDERED.

Date August 22, 1988 s/Charles W. Vagner, Clerk

s/ Grace Sompoell

(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

(Filed Sep19 1988)

ELIJAH WHITE RATCLIFF,

PLAINTIFF EP 88 CA 108

V.

THE UNITED STATES OF AMERICA,

DEFENDANTS

ORDER

Plaintiff's Motion for New Trial and Request for Conclusions of Fact and Law, having been duly considered is DENIED.

IT IS SO ORDERED.

Signed this 15th day of September 1988.

s/Emilio M. Garza

EMILIO M. GARZA

United States District Judge

NO. 88-1758/88-2018

ELIJAH WHITE RATCLIFF, APPELLANT

VS

THE HONORABLE

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH

(Received March 27, 1989)

RICHARD THORNBURGH, CIRCUIT
ATTORNEY GENERAL OF
THE UNITED STATES,
AND THE UNITED STATES
OF AMERICA,
APPELLEES

NOTICE OF APPEAL

TO THE HONORABLE CHARLES CLARK, CHIEF JUDGE, AND THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Appellant, Elijah White Ratcliff, gives notice, hereby, of his intention to Appeal to the Supreme Court of the United States from the per curiam Opinion of a panel of the United States Court of Appeals for the Fifth Circuit rendered on January 31, 1989, and the Order denying Appellant's Petition for Rehearing

and Suggestion for Rehearing En Banc entered on March 13, 1989, declining the relief sought by Appellant under docket No. 88-1758 as consolidated with No. 88-2018.

Dated: March 21, 1989

s/Elijah W. Ratcliff

APPELLANT, PRO SE

ELIJAH W. RATCLIFF

AFFIDAVIT OF SERVICE

Appellant, Elijah White Ratcliff, certifies under penalties of perjury that a copy of the foregoing and attached Notice of Appeal was served on Appellee herein by first class United States Mail addressed to:

Solicitor General of the

United States

U. S. Department of Justice

Tenth Street and

Constitution Avenue

Washington, D. C. 20530

and

Hon. Henry K. Oncken

United States Attorney

Southern District of Texas

P. O. Box 61129

Houston, Texas 77208,

this 21st day of March, A. D., 1989.

s/Elijah W. Ratcliff

AFFIANT

GUIDE TO ABBREVIATIONS PERTINENT TO STATEMENT

ABBREVIATION	REFERENCE
Ap.	Record Excerpts in Lieu of Appendix (Fifth Circuit Rule)
D	Defendant's Exhibit
Doc. No.	Docket Item Number from the District Court
l.	Line or lines of page
P	Plaintiff's Exhibit
p	Page
pp	Pages

SD TX----------United States
District Court for the
Southern District of
Texas

Tr.----------Transcript from
Trial Court

USCA----------United States Court
of Appeals

V.----------Volume of Trial
Court Transcript

WD TX----------United States
District Court for the
Western District of
Texas